

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FORD MOTOR COMPANY-UAW,
RETIREMENT PLAN,

Plaintiff,

v.

ANDRIENNE WHEATLEY, *et al.*,

Defendants.

CASE NO. 1:09 CV 477

JUDGE DONALD C. NUGENT

ORDER ADOPTING
REPORT AND RECOMMENDATION

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kenneth S. McHargh. The Report and Recommendation (ECF #52) is hereby ADOPTED with clarification. The matter was before the Court on Defendant, Andrienne Wheatley's motion for summary judgment, and Defendant, Bessie Horn's motion for dismissal and the appointment of counsel. Ms. Horn's motion also contained purported counterclaims against the Plaintiff, and Defendant Wheatley. (ECF # 39, 47). Magistrate Judge McHargh found that Ms. Horn's motion for appointment of counsel should be denied; Ms. Horn's motion to dismiss the Plaintiff's claims should be denied; Ms. Horn's counterclaim/third party claim against the Plaintiff and Defendant Wheatley should be dismissed as untimely; and Ms. Wheatley's motion for summary judgment should be denied. Both defendants filed objections to the Magistrate's Report and Recommendation. (ECF #53, 54).

The Court has reviewed *de novo* those portions of the Magistrate Judge's Report and Recommendation to which objection has been made. *See* FED. R. CIV. P. 72(b). The Court finds that Petitioner's objections raise no arguments (factual or legal) that have not been fully addressed by the Magistrate's Report and Recommendation, except that Defendant Wheatley's objection to the "recommendation that this Court grants full faith and credit to the Sumter County Probate Court Order," does justify a clarification. This Court does not read the Magistrate's Report and Recommendation as making a final determination on the issue of whether the Sumter County Probate Court's order granting letters of administration to Ms. Horn is entitled to full faith and credit under the circumstances of this case. The statement at the end of page 33 of the Report and Recommendation surely suggests that this is part of the Magistrate's determination, but that statement is inconsistent with the reasoning set forth in the remainder of the report, and appears to be merely an inartfully articulated determination that the issue of full faith and credit cannot be decided against Ms. Horn at this juncture, on a summary judgment motion.¹ Indeed, as set forth earlier in the Report, although the principles of full and faith and credit are to be applied to the Sumter County Order, there remains a question of fact as to whether the Sumter County Probate Court had jurisdiction pursuant to Alabama Code 1975 § 43-2-40 to issue its Order, and if so, whether that Order was obtained by fraud perpetrated by Ms. Horn or her son. As stated by the Magistrate, the full faith and credit doctrine is not exercised and the "judgment of a sister state's court is subject to collateral attack in Ohio if there was no subject matter or personal jurisdiction to render the judgment under the

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To the extent that the Report and Recommendation may appear to suggest that this issue has been fully determined, the Court would decline to adopt that small portion of the Report.

sister state's internal law" or if the judgment was obtained through fraud. *Litsinger Sign Co. v. American Sign Co.*, 11 Ohio St.2d 1, 4, 227 N.E.2d 609, 613 (Ohio 1967); *Schwartz v. Schwartz*, 113 Ohio App. 275, 173 N.E.2d 393 (Ohio App. 1960).

The Court finds Magistrate Judge McHargh's Report and Recommendation to be thorough, generally well-written, well-supported, and correct on all other issues addressed therein. The Magistrate's Report and Recommendation fully and correctly addresses all of the issues raised in the relevant motions, and the objections are not persuasive. This Court, therefore, adopts the Magistrate's Report in its entirety, incorporating the clarification discussed above. Defendant Wheatley's Motion for Summary Judgment is DENIED; Defendant Horn's motion to dismiss and to appoint counsel is DENIED; and the claims raised by Defendant Horn against Plaintiff and Defendant Wheatley are DISMISSED. (ECF # 39, 47). IT IS SO ORDERED.

/s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: July 14, 2010